Supreme Court, U.S.
FILED

96 825 SEP 17 1996

OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States
October Term, 1996

TED R. PERKINS, II,
Petitioner

versus

UNITED STATES OF AMERICA,
Respondent

Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Third Circuit

APPENDIX TO PETITION
FOR WRIT OF CERTIORARI
Volume II of II

Joseph M. Devecka
111 Sowers Street, Suite 600
State College, PA 16801
(814) 234-5227

Counsel of Record for
Petitioner, Ted R. Perkins, II

140 pp

APPENDIX TABLE OF CONTENTS

Volume I

1. Opinion, Order, Findings of Fact RE: Suppression of the Honorable James F. McClure, District Court for the Middle District of Pennsylvania, dated January 5, 1995 Page Ap 1

2. Opinion and Order of the United States Court of Appeals for the Third Circuit, dated June 19, 1996 Page Ap 28

3. Notice of Appeal

   a. Copy of Appellant's District Court Motion to Proceed In Forma Pauperis Page Ap 44

   b. Copy of Opinion and Order of the Honorable James F. McClure construing Defendant's (now Appellant's) Motion to Proceed In Forma Pauperis as a Notice of Appeal Page Ap 49

4. Motion to Suppress Certain Evidence Page Ap 53

5. Notes of Testimony of Suppression Hearing of December 29, 1994

   a. Testimony of Pennsylvania State Police Trooper Ernest Barber

Direct	Cross	Redirect	Recross
Ap 66 (Vol I)	Ap 159 (Vol II)	Ap 203, 213 (Vol II)	Ap 212, 214 (Vol II)

b. List of Appendix Suppression Exhibits Page Ap 65

Volume II

6. Notes of Testimony of Cont. Suppression Hearing of January 3, 1995 Page Ap 222

a. Testimony of Defendant (now Appellant) Ted R. Perkins, II

Direct	Cross	Redirect	Recross
Ap 224	Ap 250	--	--

b. List of Appendix Suppression Exhibits Page Ap 223

CROSS-EXAMINATION

BY MR. DEVECKA:

Q Trooper, you said that the Defendant was apprehended at a nearby facility. What was between the restaurant and that nearby facility?

A A Days Inn Hotel.

Q A Days Inn Hotel?

A Um-hum.

Q Do any of these pencils work for -- pens work for that?

You're saying that if you look down towards the Best Way Motel at that truck stop, that the garage -- truck garage is on the other side of that?

A Of which truck stop?

Q The truck stop where you did this bus interdiction.

A That is the Best Way, sir.

Q Is the restaurant that they stop in front of the Buckhorn Restaurant?

A. No, sir. They stop at Best Way. The restaurant is in the rear of the Best Way Truck Strop.

Q So they stop in the truck stop where the trucks are located?

A At Best Way, yes.

Q I'm not sure that I understand from what you are saying where the various locations are and where the bus was. Could you draw it for me, please?

A Now, this obviously, is not going to be to scale and I'm not that good of an artist, but I'll do the best I can for you. You have to excuse my spelling as well.

This here would be the best drawing that I could do of the Best Way Truck Stop at this point. In the rear of the Best Way Truck Stop there's a restaurant. The bus would stop

at this location here in front of this little overhang.

THE COURT: That doesn't go any good if I can't see it, so if you'd hold it up while you're pointing to it.

THE WITNESS: I'm sorry, Your Honor.

THE COURT: And you can come here, to, Mr. Rocktashel.

MR. ROCKTASHEL: May we give this an exhibit number?

THE COURT: Yes, I think we ought to do that. Do you agree, Mr. Devecka? This is Defendant's Number 1.

(Whereupon, a document was produced and marked as Defendant's Exhibit No. 1 for identification.)

THE COURT: Now, if you just hold it so you can be close enough to point to it so Mr. Rocktashel can see it. Go ahead and ask him what you'd like to ask him.

MR. DEVECKA: Where is Mr. --

THE COURT: We're all right here.

THE WITNESS: This is State Route 0150, which is the route in front of Best Way. This area here would be Interstate 80. Best Way Truck Stop is a large building. In this back portion is a restaurant. The bus would come in off 150, pull in and stop in front of this semicircular overhang. These are concrete barriers, I guess to keep the trucks from driving into the place or whatever (indicating).

The bus would stop right here at this location, and this is where the people would debark. And from here they go to the restaurant, the store, the game room. These are the fuel pumps. Next to that is a hotel. I believe it's a Days Inn. Over here there's like a wooded area. And down in this area is a parking lot. And that's basically the --

BY MR. DEVECKA:

Q You have this labeled Buckhorn?

A Yes, sir. The Buckhorn is the next property up from the hotel. And that's also like a truck stop and it has, I believe, a restaurant.

Q When you say the hotel is here, you have it on, as you look at the drawing, the right side. Isn't in a fact the hotel is down here to the left side of that drawing?

A No, sir. That would be a cornfield. And this is like a garage area here. This is more woods and an open, like, large yard here. And across the road here are corn fields and woods.

Q Is there a railroad track that runs back across here?

A I believe there is.

Q And a bank that goes down?

A I believe there is.

Q And then there's an 88 Lumber behind that?

A I've never seen the 88 Lumber. But if that's going toward the interstate, then that's correct.

Q And over here you say are corn fields?

A That's correct. There was a cornfield there this summer and there was cornfield over here this summer (indicating). Now, that's as you face the truck stop, counselor.

Q Okay. Just a second. I am going to ask you about this picture I'm showing you. Perhaps we should mark it so I can ask you questions about Defense Exhibit 2.

(Whereupon, a photograph was produced and marked as Defendant's Exhibit No. 2 for identification.)

MR. ROCKTASHEL: Your Honor, may I see the photo?

MR. DEVECKA: Sure.

BY MR. DEVECKA:

Q Now, does this photo appear to be a view from here down across the truck stop that you mentioned? And you see Best Way sign on the other side?

A This photograph here appears to be taken from the Buckhorn travel plaza.

Q This way (indicating)?

A That's correct.

Q And it shows the Best Way sign over on the left-hand side of that picture, is that correct? Hotel sign?

A Yeah. I don't know that's the Best Way sign, but that's definitely the hotel sign. That would probably go right here, this sign. To orient the picture to my drawing, would probably be over here somewhere (indicating).

Q And that is the Defendant's Exhibit 2, and that shows the motel sign on this side; is that correct?

A I believe it does. Yes, it does.

Q Do you believe it might be correct?

A I believe it is.

Q But does show the front here of the truck stop?

A No, it doesn't. Actually it only shows the sign.

Q Right. But it shows the -- it's taken across the front of the truck stop, is that correct?

A It looks like the angle of the photograph is in that direction.

Q Thank you. So does it look as though the pavement continues all the way down from that truck stop to the motel?

MR. ROCKTASHEL: Your Honor, I object to the lack of specificity. Are we talking about the view of the picture or the actual terrain that the picture is intended to represent? I think that ought to be clarified.

THE COURT: I interpreted the question as to what exists on the property, regardless of what the photograph shows.

MR. DEVECKA: Did you look --

THE COURT: By paving, what --

BY MR. DEVECKA:

Q It continue -- paved as a parking lot or is it paved area?

A In this photograph, asphalt is separated by intervening barriers, which is like a guide rail and a concrete curb. From there it looks like more asphalt. From there it looks like the pavement -- from here it looks like it keeps on going. But I know that there is, in fact, a grass strip that separates the Days Inn from Best Way. So I guess the answer --

Q But that would be on left side of your picture?

A The entrance way is actually coming in here this way (indicating). And this -- I

believe this area here is an intervening grass strip.

Q You're indicating intervening grass strip between the truck stop and the Buckhorn Restaurant?

A I'm not familiar with what's intervening between the hotel and the Buckhorn.

Q You're saying the Buckhorn is down here by the hotel?

A This photograph was taken from the Buckhorn.

Q So where's the hotel?

A The hotel? In here in your photograph would be out of your view finder here to the right.

Q But that is the sign for the motel, is that correct?

A I believe it is.

Q And that appears to be at the left-hand side of your picture, as the picture is

taken, as you said of the parking lot of the Buckhorn Restaurant?

A That's what it appears to be, yes.

Q But that's not exactly what's true?

A I'm not certain. I don't know exactly what signs look like, you know, from this angle.

Q But you're saying the hotel is to the right of the Best Way restaurant?

A Oh, absolutely.

Q Okay. Thank you.

A One hundred percent.

Q Do you know what the back of the truck -- of the truck stop looks like?

A Looking at what?

Q The area in the back of the truck stop.

A There's a grass section back there. There's woods. There's a parking lot behind the restaurant. And I believe there's railroad tracks, like you indicated.

Q But immediately behind the restaurant is paved, is that correct?

A In the parking lot that I know of, yes.

Q Okay. So if you were to go behind the restaurant as you drew it in front of the truck stop, and that is back here where my thumb is (indicating)?

A. That would be correct.

Q That will be paved?

A A portion of it, yes. Not the entire --

Q No, I know there's grass behind there.

A Correct.

Q But there's a parking lot behind there?

A Yes, there is.

Q Have you ever gone back there and looked down this way (indicating), from right to left on your drawing?

A Actually no. The furthest I've ever been back there is the grassy field area and in the parking lot itself. I've also been back -- there is a fence back here that borders a -- looks like an impound yard or something like that. I've been back in there. But I've never been back to, you know, the woods or the railroad tracks.

Q Have you walked in back of the Best Way?

A The grass fields and parking lot, yes.

Q No. I mean on the parking lot.

A Yes.

Q It as possible to walk in back there?

A Behind here?

Q Yeah.

A Oh, absolutely.

Q Thank you.

And you say when Mr. Perkins was found, he was at a truck stop beyond the motel, hotel?

A Correct.

Q What is that, a hotel or a motel?

A I don't know. I've never stayed there and I've never been over there.

Q Okay. And what would be the Buckhorn Restaurant?

A The hotel?

Q No. Are you saying he was found in a parking lot beyond the motel, hotel?

A Correct. He was found in the Buckhorn parking lot.

Q Okay.

A Or what I know as the Buckhorn.

Q Okay. All right. Now, you went is there to interdict this bus; is that correct?

A I went there to interdict several buses.

Q And this was among --

A Yes, sir.

Q -- this group?

A Yes, it was.

Q Did you have any information that would lead you to believe that there were drugs being transported on this particular bus --

A On this particular bus?

Q Yes.

A No.

Q So you went there in anticipation of perhaps finding some?

A Yes.

Q Now, you say you went to school for interdiction?

A I've had some interdiction training.

Q And because of that interdiction training, that's what led you to position the troopers and the dogs so that the debarking passengers would have to walk past them?

A That's what we did on this bus. Every bus is different, depending on manpower, who's

there. Different guys like to do different things.

Q But in this particular case, you specifically took the troopers and the dog and positioned them near the bus door so that the debarking passengers would have to walk by them or see them?

A Absolutely not. I didn't position anyone anywhere. I positioned myself to watch the people debarking. I'm not a supervisor. I'm not in charge of positioning people, or the position that they chose to take up are the ones that they decide among themselves.

Q Okay. So you specifically, though, positioned yourself near the door to watch debarking passengers; is that correct?

A In near proximity. You know, I wasn't blocking --

Q You weren't blocking the door?

A That's correct.

Q But you were within 10, 15 feet of the door?

A Yes, I was.

Q Now, did you testify on direct that Mr. Perkins had gotten off the bus and had gone some ten feet or so when he stopped stretching and noticed you, and you said the canine?

A I assume he noticed the canine. He noticed police -- he noticed our team in general being there. He noticed police. He -- had gone approximately 10, 15 feet.

Q And you saw him stretching and appear to be groggy?

A Absolutely.

Q Sleepy?

A He appeared sleepy.

Q This was nighttime, is that correct?

A That's correct.

Q And you testified on direct that sometimes you station police officers around a

debarking bus so you can see what passengers are doing on the bus?

A We don't position them around the bus. We position them between the Best Way and the bus. And we try to stay pretty collectively together for safety, for one; and we do watch, in fact, the bus people, the inside to see what they're doing there. I do.

Q What did you see in this bus in particular?

A Well, I saw people stand up. I saw people shifting bags, putting bags up top, putting them down to the bottom. I also watched people debark.

Q Did you happen to notice Mr. Perkins through the window?

A No, I didn't.

Q You say Mr. Perkins was in -- not the first passenger on the bus, but perhaps toward the middle of the group, little forward of the middle of the group?

A Correct.

Q And you had been present at the truck stop from 4:00 or 6:00, is that correct? you had been there somewhere between -- between almost six hours and four hours, almost four hours?

A I believe that's correct.

Q 9:45 p.m.?

A At this point I'm not certain what buses were running in there at what time. But we were probably there probably six, eight, ten. Somewhere -- we were definitely there four hours, anyway.

Q Now, are you saying that every westbound Greyhound bus from New York to, say, Cleveland has narcotics or drugs on it of some kind?

A Well, I could say that every second or third bus that we have interdicted does.

Q That's your experience?

A Yes, sir.

Q Now, you saw Mr. Perkins get off the bus; is that correct?

A Yes, I did.

Q And you didn't say anything to him, is that correct?

A Didn't say a thing.

Q Now, you say you took the canine on the bus?

A I didn't take the canine on the bus. Another trooper did.

Q Did you see the canine on the bus?

A Yes, sir, I did.

Q And the aisle of the bus is how wide?

A This would have to be a guess. I would say foot and a half, maybe two feet.

Q And was the canine conducted down the aisle of the bus?

A I believe it was, yes.

Q Did you see the dog further down from the door when you were on the bus?

A I know that the bus -- the dog was on the bus. I don't recall if it was taken the full length or not. I know the dog was on the bus.

Q Okay. Now, where were the troopers -- where were you, to be specific, between the time the dog was escorted onto the bus and the bus departed?

A I was on the bus, off the bus, inside the Best Way, inside the Restaurant, inside the upstairs bathrooms and showers. I was in the game room. I was probably in the basement. I was in some hallways. I was basically all over the Best Way during that whole time.

Q Okay. Now, at what time were you given information about this ticket? Let's say the time the dog that goes on the bus is the marking time?

A Okay.

Q And I assume that was within three, four minutes of the passengers getting off; stopping, getting off?

A It wouldn't be quite that soon. It would probably be maybe between five and ten minutes, at the earliest.

Q And where was Mr. Perkins at the time that the canine was taken on the bus?

A Mr. Perkins was outside the Best Way walking, pacing the sidewalk here.

Q Back and forth?

A That's correct. Yeah. He was anywhere from the semicircle overhang area all the way out to here (indicating). Excuse me. Your Honor, I'm sorry. He was anywhere from the front semicircle portion here to this entire sidewalk are here in front of the Best Way (indicating).

Q Thank you?

THE COURT: By the way, did the bus stay in the same position the whole time?

THE WITNESS: Yes, sir. It never moved.

BY MR. DEVECKA:

Q So the dog probably went on about ten minutes after the passengers debarked?

A Approximately. It might have been a little sooner than ten.

Q Do you know -- do you recall seeing anybody talking to the driver about tickets?

A I believe Trooper Sattazahn talked to the driver about tickets or received the tickets from him.

Q Okay. And then you two examined the tickets together?

A Not really. Tickets aren't my thing. Tickets are Sattazahn's thing. He likes tickets. I like watching people.

Q The ticket that you ultimately attribute to Mr. Perkins doesn't have a name on it, is that correct?

A That's correct.

Q So the only way that you know that that was Mr. Perkins' ticket is because someone told the trooper, is that correct?

A To my knowledge, that's correct.

Q Did you fill out a police report?

A Yes, I did.

Q May I see a copy of his police report?

MR. ROCKTASHEL: A copy was furnished with the exhibits this morning, approximately nine a.m.

THE COURT: A copy of that to counsel as well?

MR. ROCKTASHEL: I didn't provide a copy for the Court. I provided a copy pursuant to Rule 26.2 to defense counsel with the packet of exhibits I laid on counsel's table.

THE COURT: That's what I was referring to.

MR. ROCKTASHEL: Your Honor, I didn't mark a separate Jenks type exhibit for the Court, unless the Court would --

THE COURT: No, I'm not looking for it. He is. I gather what you're telling me is you provided it to him.

MR. DEVECKA: Well, unbeknownst to me.

BY MR. DEVECKA:

Q Did you record the bus driver's name in your police report?

A No, I did not.

Q Did you record any passenger's name in your police report?

A No, I did not.

Q Do you know or were you ever told that any other police, state police officer recorded the name of the bus driver in his report?

A I don't believe they did.

Q Okay. Now, you went on the bus. To your knowledge, did somebody remain on the bus

or near the bus the whole time the interdiction was taking place?

A I believe there were people milling around the entrance way watching us, including Mr. Perkins. And there was also a woman that was on the bus as well during the whole process.

Q Did you take her name?

A No, sir.

Q During the interdiction, when you left to bus to go to Best Way, did anybody stay with the bus, any state trooper?

A I don't know.

Q You don't know?

A There was always someone outside. Do you mean on the bus, outside the bus?

Q As far as standing outside the bus.

A Oh absolutely. There's always someone around the bus.

Q State trooper, you mean?

A Absolutely.

Q Okay.

A Now, whether or not they were actually on the bus, inside on the bus --

Q Or standing outside.

A But they were definitely outside.

Q In front of the bus doorway, within 10 or 15 feet?

A There is always someone viewing the bus.

Q Okay. And after the canine was taken on the bus, did you lose sight of Mr. Perkins?

A Somewhere along the interdiction process, just Mr. Perkins standing out there acting different, doesn't mean I have to focus a hundred percent of my attention on him, and I went on with the details and did, in fact, lose contact with him.

Q Okay. And at that time did you conduct what in your affidavit you called a cursory search?

A That's correct.

Q That's what you are talking about when you went in and you went looking in the showers and the game room?

A That's correct.

Q And the store. And how many troopers were doing this search?

A At least two. I know I was. And I believe a couple of the other guys were keeping an open eye. I know I was actively searching. I don't know --

Q But you called that a cursory search, is that correct?

A If that's what I called it in my report, I guess it would be a cursory search.

Q What would you call it in your affidavit?

A A search, cursory search. I don't know.

Q You don't know if you called it a cursory search in your affidavit?

A I would have to refer to my affidavit.

MR. ROCKTASHEL: Your Honor, whether he called it cursory, active, I don't think that really matters all that much. He's described what he's done. And whether or not that's cursory or some other kind of search, it really doesn't matter. I think the main --

THE COURT: I agree. It's what he did and whatever he can elicit as to what he did, did or didn't do.

BY MR. DEVECKA:

Q You concentrated your search inside the restaurant, is that correct?

A No, that's incorrect.

Q Where did you look?

A Besides looking inside the restaurant, I looked in the game room. I looked in the store area, and I checked upstairs in the shower area and couple of the hallways.

Q Inside the building?

A Inside the Best Way Truck Stop, yes.

Q Isn't it true that you never saw Mr. Perkins go into that building?

A That's true.

THE COURT: Let me make it clear. Are you talking now about a search that you made entirely prior to the removal of the bag from the bus and the opening of the bag?

THE WITNESS: That's correct.

THE COURT: All right.

BY MR. DEVECKA:

Q And at that time -- at the time that you were doing this search of the interior of the building, did you then continue to search into the -- behind the building to see if anybody was in that parking lot area that extends behind the building?

A No, I don't believe I did.

Q Now, after you did that search that you may have called cursory search in your exhibit, I believe if I showed you -- District

Attorney, is there an exhibit number on the arrest warrant?

MR. ROCKTASHEL: Counsel, that's my working copy of the arrest warrant, which you're welcome to use, if you like. I think the trooper has a copy of his own arrest warrant in his paperwork.

BY MR. DEVECKA:

Q Do you have a copy of your arrest warrant there?

A Yes, sir, I do.

Q Can you look at your copy of your arrest warrant and tell me whether you called this a cursory search or not?

MR. ROCKTASHEL: Your Honor, I object. I don't think the search or the term cursory is really going to lead us anywhere.

THE COURT: Well, I'll let him find it.

BY MR. DEVECKA:

Q Is that the report? Is that your affidavit?

A I believe that is the affidavit.

Q It's in here someplace, I believe.

A You said the arrest warrant. This an affidavit for a search warrant.

Q Okay. Fine. Did you use the term cursory search in the search warrant affidavit, too?

A I could look and advise you if I did or did not. Do you want to direct me to a certain line, counselor?

Q I will.

A Okay.

Q This is the arrest warrant affidavit.

A Okay.

Q Do you have it?

A Is that a page two on top of that? Yeah.

Q You use the term cursory search?

A Yes, I did.

THE COURT: Mr. Devecka, I don't want to interrupt you. I understand the Defendant needs a break at this point, and we'll do that. And Mr. Rocktashel, if you can make a phone call.

MR. ROCKTASHEL: Certainly, Your Honor.

THE COURT: Take a recess. We will try to keep it to ten minutes.

MR. DEVECKA: Your Honor, if we could approach the bench briefly while we're here. We may resolve the need for some of these witnesses here today. I believe that's what he's going to make a phone call about.

THE COURT: Take a break and we'll do a sidebar off the record here at the moment.

(Whereupon, a discussion was held off the record between the Court and counsel.)

(Whereupon, a short recess was taken.)

AFTER RECESS

MR. ROCKTASHEL: Your Honor, I can report back to you. Would you like to do it at sidebar?

THE COURT: I think we might as well continue to do that.

(Whereupon, a discussion was held off the record between the Court and counsel.)

THE COURT: You may proceed, sir.

MR. DEVECKA: Thank you, Your Honor.

BY MR. DEVECKA:

Q Now, it was after this cursory search of the facility that you then went back to the bus, the bus was preparing for reboarding; is that correct?

A I believe that's the process, yes.

Q Is that what you have in your affidavit in front of you?

A On which affidavit?

Q Well, let's look at the affidavit of probable cause. You remember the line where

it said it was a cursory search, at which time a cursory search began.

A Okay. That's the arrest warrant affidavit.

Q Yes. You are affiant and other troopers checked the truck stop but could not locate him?

THE COURT: Just a minute.

MR. ROCKTASHEL: Let me interpose an objection at this point. If I'm not mistaken, I think that the colloquy between counsel and the witness was something to the effect that that is the usual practice, and then counsel inquired, well, is that what it says in your affidavit. I mean if the affidavit is inconsistent with his testimony about the usual course of events, I don't have a problem. But if we could just pinpoint what it is that's being referenced.

MR. DEVECKA: I am.

MR. ROCKTASHEL: In reality and what counsel's attempting to impeach using the affidavits, might be easier than going back and forth trying to find things in the paperwork.

THE COURT: Do you have a specific line?

MR. DEVECKA: Yes.

THE COURT: The affidavit for the arrest warrant?

MR. DEVECKA: I'm not trying to impeach. I am trying to clarify his earlier testimony. He testified about the events that took place. I'm trying to put them in order that they actually took place.

THE COURT: All right.

MR. ROCKTASHEL: My point is, Your Honor, I don't think we need to refer to the affidavits to do that. We can simply ask the witness when things happened. If they don't

jive with the reports, then, you know, we will face that in terms of an impeachment issue.

THE COURT: Well, I agree, Mr. Devecka. If you could just ask him what happened when.

BY MR. DEVECKA:

Q After this search took place, you went back to the bus because it was reboarding; is that correct?

A That's correct.

Q And you knew Mr. Perkins wasn't on the bus because you looked and didn't see him?

A That's correct.

Q Okay. How many minutes after this search were you on the bus, noticing Mr. Perkins wasn't there, reboarding time?

A How many minutes from --

Q From the time your cursory search was concluded until the time you reboarded the bus?

A The time I reboarded the bus?

Q Um-hum.

A Probably a minute, because I finished my search and then went back on the bus or was in the area of the bus.

Q And when you were outside, you could not hear the announcement the bus was going to depart from the restaurant, could you?

A That's correct. I don't know if there was an announcement or not.

Q When you reboarded the bus, you talked to the passengers then; is that correct?

A That's correct.

Q And it's that time that you were directed to the black bag. You hadn't seen it before?

A The black bag was actually toward the end of the interviews we had --

Q In answer to my question, you hadn't seen the black bag before the interview; is that correct?

A That's correct.

Q Okay. Now, when you saw the black bag, you held it up and asked if it was anybody's on the bus; is that correct?

A That's correct.

Q Has it every happened in -- strike that. When you took the -- did you specifically take possession of the bag?

A Yes, I did.

Q Physical possession?

A Yes, I did. I walked it off the bus.

Q How did you hold the bag when you walked it off the bus?

A Probably by the two top carrying straps.

Q Just carried it off the bus in your ride hand. I'm left handed, but would you do it in your right hand?

A I assume I did. I'm not exactly certain.

Q You walked off the bus, down the steps. Which way did you turn then?

A You have to make a right to debark the bus.

Q I mean after you get off the bus.

A Okay.

Q Put the bag in your right hand, which way did you turn?

A Probably right. Generally we stop right outside the exit next to the bus and open it there.

Q Okay. So you opened it in the parking lot in front of the -- in front of the bus door?

A Not exactly in front of the bus door. We didn't block the doorway.

Q Yeah. When I say that, I don't mean that you were standing so close to the door that you were blocking it.

A Right.

Q But within ten feet or so of the bus door?

A Right. In view of the bus.

Q You opened the bag?

A Um-hum.

Q And that's when you saw the packages in the bag?

A That's correct.

Q And then the bus -- you went back on the bus to ask questions about the bag?

A I believe we did, yes.

Q Did you?

A I believe so.

Q And you asked questions for another ten minutes or so?

A Probably not even that. Ten minutes is a long time. Probably less than five.

Q Okay. But in that time you didn't write down any name of any passenger you talked to, is that correct?

A That's correct.

Q And you didn't write down the name of the bus driver?

A That's correct.

Q You didn't write down any type of verbatim statements they gave you?

A No, sir.

Q You just wrote conclusory statements like they identified a tall, thin black man in a running suit or their description agreed with the bus driver's or terms like that?

MR. ROCKTASHEL: Your Honor, he did take a supplemental report outlining what the bus driver stated, if that's what counsel is getting at. But there was no verbatim statement taken from the individuals in the sense of a signed statement taken from the bus driver or any other passenger.

THE COURT: Or any other passenger. Thank you.

MR. DEVECKA: If that's a stipulation, I'll accept it.

MR. ROCKTASHEL: I'm not proposing a stipulation. I'm just stating to the Court that just to clarify this issue so we don't waste any time on it. There was a supplemental report prepared with respect to the bus driver, but there wasn't an actual verbatim statement, as counsel has alluded to in the sense of a signed statement.

THE COURT: I understand.

BY MR. DEVECKA:

Q Did you take notes when you talked to these people?

A No.

Q These people, I mean the bus driver and passengers?

A I took no notes.

Q Thank you.

And prior to walking off the bus with the bag in your right hand --

A I don't know if it was my right hand.

Q I'm sorry. With your bag in your hand, you made no attempt to hide the bag when you walked off the bus; is that correct?

A That's correct.

Q And you walked only within ten feet of the bus before you opened the bag, is that correct?

A I'm pretty sure that's correct.

Q Okay.

A I don't exactly remember the positioning where we opened the bag.

Q One last question. Looking at Defendant's Exhibit 1, the drawing that you made?

A Yes, sir.

Q I'm putting my finger down in the left-hand side of this page.

A Um-hum.

Q Are there corn fields over there, is that what your testimony was?

A That's correct. At the border of this property here there's a field, and I believe you could see the stumps and cornstalks still there if you drive by it today.

Q But this being in September, the cornstalks weren't actually there; is that correct?

A I'm going to say I assume they were there. I don't know if they were there on September 1st or not. I didn't pay attention to that.

MR. DEVECKA: No further questions.

THE COURT: Any redirect, Mr. Rocktashel?

MR. ROCKTASHEL: Yes, Your Honor, very briefly.

REDIRECT EXAMINATION

BY MR. ROCKTASHEL:

Q I'm going to hand you a red pen and refer you to Defense Exhibit 1, the diagram

you drew, and Defense 2, the photograph. Could you make an X or some kind of mark to kind of orient what you believe the perspective would be of this particular -- of where this picture was taken? I think you indicated it may have been taken from the location of the Buckhorn Restaurant, but I just wanted to clarify that.

A Yeah. I believe the road depicted in the photograph is this State Route 150. And based on this Day's Inn sign, I would place the photograph as being taken probably in this vicinity here from the Buckhorn parking lot (indicating).

Q Can you estimate for the Court the approximate distance between the hotel and the Buckhorn Restaurant?

A Just a stab, I would say 500, 600 feet.

Q How far is the hotel from the location where the bus was stopped?

A I would say probably an additional 400, 500 feet.

Q Correct me if I'm wrong. Didn't you testify earlier that the Best Way restaurant was approximately two tenths of a mile from where the Defendant was located later that evening?

A I believe one tenth.

Q One tenth. I'm sorry. You're right. I think you did say one tenth. On this diagram, Defense 1, can you please just draw some kind of box to represent where the bus would be with the red pen I provided to you and just write bus in it so we know where the bus was located?

A (Witness complied.)

Q Could you initial approximately where you were positioned with respect to the bus, using the red pen, just with your initials, EB?

A Okay. It's really out of scale, but I'll do the best I can. According to this, it's going to look like I was standing on the sidewalk, which is incorrect.

Q Can you shade approximately where you saw the Defendant pacing nervously, with the red pen?

A (Witness complied.)

Q And you've indicated a line with two arrows at either end, is that correct?

A That's correct.

THE COURT: Okay.

BY MR. ROCKTASHEL:

Q Sir, counsel referred to the truck stop beyond the hotel, specifically the Buckhorn area, the Buckhorn facility. Is that a place, in your experience, where passengers getting off these buses normally go during the 45 minute rest break?

MR. DEVECKA: Objection. Relevance.

MR. ROCKTASHEL: Your Honor, our position, it would be relevant to whether or not the property was abandoned, because under some theory that maybe the Defendant had decided he liked the merchandise across the way a little better than the merchandise --

THE COURT: I think it goes to the reasonableness of the location of the search. Overrule the objection.

BY MR. ROCKTASHEL:

Q Is that a normal location for people debarking the bus for the 45 minute rest stop to go to?

A No, it is not.

Q How about the parking area behind the Best Way Truck Stop facility that counsel referred you to?

A No, that's not a normal place, either.

Q Counsel talked about the canine being taken down the bus aisle approximately ten

minutes after the passengers debarked. Do you recall that testimony?

A Yes, sir, I do.

Q And was the canine taken on the bus while the passengers were still on the bus.

A No. We never take a canine onto the bus. We ask everyone to exist the bus, if they would like, and we tell them we are going to have a dog check the bus.

Q Now, do you force the people or compel the people to get off the bus?

A No. We simply ask them. If they don't want to get off, they don't have to.

Q But what is the purpose of telling them that you are going to bring the canine unit on the bus before you actually do that?

A Well, we want to make them, one, aware of what we're going to do. We pull no punches. And we also want to make it easier for the dog to work.

Q Did all the passengers actually get off the bus after you made the announcement in this particular case on September 1st?

A In this case there was one woman who stayed on.

Q Was she the same woman I think you had described as foreign who perhaps spoke with -- didn't understand English as well as perhaps the other passengers?

A That's correct.

Q Counsel asked you about the so-called cursory search, and I think you had described looking in the game room, the shower room, the halls, and you outlined a number of areas in the Best Way facility. Just to clarify -- I think the Court may have done that -- you conducted that search prior to learning about the bag on the seat in the bus; is that correct?

A That's correct. He -- he made me very curious and I wanted to find out where he was and I couldn't find him.

Q When you say he, you are referring to Defendant Perkins?

A Correct.

Q Now, when did the bag first come to your attention in the sequence of things?

A Probably toward the very end of the interdiction, toward the end of the interviews. We had actually done the final boarding. We had gotten on, done the interviews, identified all the bags, save this particular bag which is Exhibit 2. At that point that's when it came into our knowledge as that being the bag.

Q Would it be fair to say that you learned about the bag being on the seat as you conducted the interviews after the passengers got on the bus?

A That's correct.

Q Now, when you -- counsel asked you to describe where you went after you got off the bus, carrying the bag. When you got off the bus with the bag, did you see the Defendant in the vicinity of the bus?

A No, I didn't.

MR. DEVECKA: Objection. Relevance.

THE COURT: Overruled.

THE WITNESS: No, I did not. We didn't find him until approximately two hours later.

BY MR. ROCKTASHEL:

Q Did you see the Defendant pacing in the area you previously described and marked on that exhibit?

A Not at that time.

Q Would that location have -- strike that.

MR. ROCKTASHEL: I don't have any other questions, Your Honor.

THE COURT: Anything further, Mr. Devecka?

MR. DEVECKA: Yes.

RECROSS-EXAMINATION

BY MR. DEVECKA:

Q You knew where Mr. Perkins was found when he was arrested, is that correct?

A Yes, sir, I do.

Q That was about two hours after you began the interdiction?

A Approximately, yes.

Q You knew where he was for that entire two hours?

A No, sir, I have no idea where he was.

Q Do you know where he walked during that entire two hours?

A No, sir, I don't.

Q Now, you had completed this search, cursory or not, before you ever saw this bag; is that correct?

A That's correct. We do that with numerous people, not just Mr. Perkins.

Q Now, when you conducted this search, you were trying to satisfy your curiosity?

A I was trying to locate him, just to keep an eye on him, and I couldn't locate him.

Q Did you have probable cause to arrest the man?

A Absolutely not.

Q Did you call out his -- strike that. You didn't know his name at this point?

A I had no idea who he was.

MR. DEVECKA: No further questions.

THE COURT: You done?

REDIRECT EXAMINATION

BY MR. ROCKTASHEL:

Q What was your purpose in making this cursory search or otherwise described search of the location prior to opening the bag?

A That was me trying to locate him so I could find him.

Q And what was your intent or purpose in wanting to do that --

A Keep an eye --

Q -- once you actually found him?

A Wanted to keep an eye on him, just make sure he gets back on the bus.

Q Did you intend to employ any techniques similar to the interview techniques you conducted on the bus itself after the passengers boarded?

A Absolutely. When he got back on the bus, because he sparked my curiosity. If he had gotten back on the bus, I definitely would have interviewed him.

MR. ROCKTASHEL: I don't have any other questions.

RECROSS-EXAMINATION

BY MR. DEVECKA:

Q If you had found Mr. Perkins during this cursory or otherwise search, he didn't

have to answer any question you asked him, did he?

A That's correct. He didn't have to even talk to me.

Q But isn't it your experience when you display your badge and talk to passengers on the bus, that buses -- that 99 percent of them permit you to do what you want?

A No, they don't permit you to do what I want, but they permit me to search their bags upon consent.

Q Is that you want to do? Is that what you ask them to do?

A In some -- in most cases I do want to search their bag. I'll play the odds, the more I can get into, the more I can find.

Q And you say that 99 percent of people -- before you said 99 percent of people let you search their bags, is that correct?

A Almost every one has.

MR. DEVECKA: No further questions.

MR. ROCKTASHEL: No other questions, Your Honor.

THE COURT: You may step down, sir.

THE WITNESS: Thank you, Your Honor.

(Whereupon, the witness was excused.)

THE COURT: I'll give you 15 minutes, Mr. Rocktashel, whether you want to take it or leave it. And we have a 4:00 matter, and we will continue this hearing, whether we do it now or at 4:00 until Tuesday after jury selection.

MR. ROCKTASHEL: Just a moment.

THE COURT: So, you know, it's up to you.

MR. ROCKTASHEL: Your Honor, I would move for the introduction of the exhibits we've identified, and I think Trooper Barber touched upon just about every area that the other witness would talk about, too. So at this point we could conclude our testimony,

with the admission of evidence. I don't know if the Defendant --

THE COURT: Review the list of exhibits. What do we have admitted? Do we have any admitted?

THE CLERK: Nothing has been admitted, Your Honor.

THE COURT: Do you want to review the numbers?

THE CLERK: Exhibit 1 --

MR. ROCKTASHEL: We would move to admit the cocaine in the plastic bags.

THE COURT: Any objection?

MR. DEVECKA: Only that there's been no reason given for them being in plastic bags rather than duct tape bags. They aren't in the same state as the testimony showed them to be.

THE COURT: Well, for the purpose of this hearing, I don't think it really matters. Mr. Rocktashel did elicit testimony that it

had been transferred from the original container as observed by the trooper.

MR. DEVECKA: That's true, Your Honor. Withdraw my objection.

THE COURT: All right. It's admitted.

(Whereupon, Government Exhibit 1 was admitted into evidence.)

MR. ROCKTASHEL: Your Honor, we would move the introduction of the leather bag and associated contents, the ball cap, the shirt, the keys, et cetera.

THE COURT: Any objection, for purpose of this hearing?

MR. DEVECKA: None. None, Your Honor.

THE COURT: All right, they are admitted. We don't want them, though. You may keep them, Mr. Rocktashel.

(Whereupon, Government's Exhibit No. 2 was admitted into evidence.)

MR. ROCKTASHEL: I understand, Your Honor. We will take custody, with the Court's permission, of all the evidence.

THE COURT: What else do you have?

MR. ROCKTASHEL: We had the photos of the cocaine, 5.0 and 5.1 and the search warrant, Exhibit 6. And I believe that's basically all we've identified. And the copy of the bus ticket -- the clerk's reminded me. That's Exhibit 4.

THE COURT: Any objections to any of those, Mr. Devecka?

MR. DEVECKA: No, none, Your Honor.

THE COURT: They're all admitted.

(Whereupon, Government's Exhibit Nos. 4, 5.0, 5.1 and 6 were admitted into evidence.)

MR. ROCKTASHEL: Your Honor, the other items I didn't use was the trial exhibit list, and it seems to a dual purpose list we were using for this hearing as well.

THE COURT: Fine. Mr. Devecka -- well, so you rest at this point then with those admissions, correct?

MR. ROCKTASHEL: Yes, Your Honor.

THE COURT: Mr. Devecka, do you wish to produce any --

MR. DEVECKA: Well, I wish to offer these items into evidence and that we have testimony the Defendant. I'd rather not do it --

THE COURT: We've got D-1 and D-2 we have identified.

MR. DEVECKA: Right.

THE COURT: Any objection to those, Mr. Rocktashel?

MR. ROCKTASHEL: No, Your Honor.

THE COURT: They are admitted.

(Whereupon, Defendant's Exhibit Nos. 1 and 2 were admitted into evidence.)

MR. DEVECKA: Thank you, Your Honor.

THE COURT: You do wish to have testimony and delay this then until Monday--until Tuesday?

MR. DEVECKA: Right. I would just barely get started.

THE COURT: That's fine. All right. This case is continued, then, until jury selection at 9:30 on Tuesday, the 3rd of January. And the suppression hearing will resume immediately following jury selection. For planning purposes, that will occur no earlier than 11:00.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	
vs.	:	No. 4:94-CR-213
	:	
TED RUSSELL PERKINS, II,	:	
Defendant	:	

TRANSCRIPT OF PROCEEDINGS

SUPPRESSION HEARING

Before: HON. JAMES F. McCLURE, JR.

Date : January 3, 1995, 1:01 p.m.

Place : Courtroom Number Two
Federal Courthouse
240 West Third Street
Williamsport, Pennsylvania

COUNSEL PRESENT:

GEORGE ROCKTASHEL, ESQUIRE
Assistant United States Attorney
United States Post Office Building
Third and Market Streets
Lewisburg, Pennsylvania 17837
For - United States of America

JOSEPH M. DEVECKA, ESQUIRE
111 Sowers Street
Suite 600
State College, Pennsylvania 16801
For - Defendant

INDEX TO EXHIBITS

FOR - DEFENDANT	IDENTIFIED	ADMITTED
Defendant's Exhibit No. 3	135	135
Defendant's Exhibit No. 4	135	135
Defendant's Exhibit No. 5	137	135
Defendant's Exhibit No. 6	138	135
Defendant's Exhibit No. 7	138	135
Defendant's Exhibit No. 8	139	135
Defendant's Exhibit No. 9	141	135
Defendant's Exhibit No. 10	141	135
Defendant's Exhibit No. 11	142	135

See also Defendant's Exhibits 3-11 offered and court stated all were previously admitted p. Appendix 179.

THE COURT: Your now, this is a continuation of the suppression hearing in the Perkins case. I think, Mr. Rocktashel, you had rested; is that right, sir?

MR. DEVECKA: Yes, Your Honor.

THE COURT: Mr. Devecka, then it's your turn.

MR. DEVECKA: Yes. I call Ed Perkins to the stand.

Your Honor, I handwrote a list of exhibits for today because I had no access to staff over the weekend.

THE COURT: Well, that's understandable. That's fine.

MR. DEVECKA: I apologize for the handwriting.

THE COURT: As long as the clerk can read it.

THE CLERK: Mr. Perkins, will you raise your right hand.

* * *

TED R. PERKINS, called as a witness, having been duly sworn or affirmed, testified as follows:

THE CLERK: Be seated. For the record, state your full name.

THE WITNESS: Ted R. Perkins.

THE CLERK: Thank you.

THE COURT: You may have to speak up a little louder, Mr. Perkins. I know the chair doesn't move but I know the mike's fine. Thanks.

THE WITNESS: Ted R. Perkins.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. DEVECKA:

Q For the record, are you the Defendant in this case?

A Yes.

Q Were you a passenger on a bus traveling from Newark, New Jersey, to Cleveland, Ohio, on September 1st, 1994?

A Yes.

Q Did that bus stop for a rest stop at about 9:30 p.m. at the Best Way Truck Stop in Centre County, Pennsylvania?

A Yes.

Q Just before the bus stopped, what were you doing?

A Sleeping.

Q Did you hear the bus driver make any announcements at the rest stop?

A Well, he said we were stopping for like 45 minutes, and keep aisle ways clear.

Q Of what?

A Baggages and stuff.

Q Did you get off the bus?

A Yes

Q Did you follow other passengers off the bus?

A Yes.

Q Did you see whether or not the other passengers had baggage?

A I didn't see any passengers' baggages.

Q When you left your seat, did you take your bag with you?

A No.

Q When was the first time that you noticed -- if you noticed, the Pennsylvania state troopers?

A After I got off the bus, after I got -- I was sleeping. After I got off, probably about ten, ten feet, probably about ten, fifteen feet.

Q From the doorway of the bus?

A Yes.

Q Then did you watch the Pennsylvania state troopers at the bus?

A Yes.

Q And where were you standing?

A I was standing on the sidewalk of the bus terminal or station.

MR. DEVECKA: Your Honor, I have premarked these Defendant's exhibits. Do you wish the court reporter or someone to note the date or anything on them?

THE COURT: Just show them to counsel. Have you seen them, Mr. Rocktashel?

MR. ROCKTASHEL: No, I have not, Your Honor.

THE COURT: We are going to have your exhibit sheet copied, Mr. Devecka.

MR. DEVECKA: I have another copy here, to save you a copy. Save you the trouble.

THE COURT: I wasn't sure if you had it.

MR. DEVECKA: I'm sorry. I do. I troubled the clerk to allow me to make three copies of this, so I have another one.

THE COURT: Now, what was your question about the exhibit numbers, Mr. Devecka? Before I had you give them to Mr. Rocktashel, you had a question about them.

MR. DEVECKA: Yes. Do you wish me to have them marked in any way other than in the way I've marked with the --

THE COURT: How do you have them? Just a --

MR. DEVECKA: They're Defendant exhibit stamps. That is fine.

THE COURT: That is fine.

MR. DEVECKA: I have used two the last time. Now it goes three, four.

THE COURT: Right.

MR. ROCKTASHEL: Thank you, counsel.

THE COURT: Any objection, Mr. Rocktashel.

MR. DEVECKA: No, Your Honor.

THE COURT: They are admitted.

MR. DEVECKA: Excuse me for a moment, Your Honor.

THE COURT: Sure.

MR. DEVECKA: They were in an order here by numbers.

BY MR. DEVECKA:

Q I'm going to show you what's marked Defendant's Exhibit 3. Can you tell the Court what that is?

A It's the front of the bus terminal.

Q Can you say where this bus stopped in relation to that terminal?

A Front here (indicating).

Q I'm going to show you what's marked Defendant's Exhibit 4. Can you say what that is?

A That's like is part of the terminal. It's like the -- where the restaurant is.

Q Okay.

A More or less.

Q If you're looking directly at the terminal, which sidewalk does that show, the left or the right?

A The right-hand side.

Q Okay. Now, where were you watching the police officers, state police officers at the bus from initially?

A On the sidewalk, on the side of the terminal.

Q Is that the sidewalk in exhibit -- Defense Exhibit 4?

A Yes.

Q Did you hear the testimony of Pennsylvania State Trooper Barber, the last part of this hearing when he testified about you walking back and forth on that sidewalk?

A Yes.

Q Is that the sidewalk you were on?

A Yes.

Q When you were on that sidewalk, what did you see the Pennsylvania State Police do then at the bus?

A Well, they were all standing by the bus and they -- people were standing out there, and people would get off the bus and they went up on the bus.

Q Are you saying that the people got off the bus?

A Passengers, yeah.

Q Right. And where were they standing, do you remember?

A They were standing out by the terminal. Some maybe went in, but they were standing out by the terminal.

Q In front of the terminal?

A Yes.

Q And how were they standing in relation to the bus?

A They were all scattered around, looking.

Q And did you see the police do anything in relationship to the dog that they had with them?

A Took the dog on the bus.

Q I show you Defendant's Exhibit 5. Can you tell the Court what that is?

A That's -- is like a loading dock or some kind of dock for trucks stuff or something.

Q Where is that in relation to the sidewalk where you were just prior to that?

A Around the corner from the one sidewalk.

Q Where did you go -- you say you saw the police take the dog on the bus?

A Yes.

Q Where did you go when that happened?

A Went around to the dock here (indicating).

Q Could you still see what was going on at the bus?

A I could and I couldn't because of the people. There was like -- the people were out there, so I couldn't see.

Q Now, what did you see happen then while you were at the corner there? That's in Defense Exhibit 5. What did you see in relation to the bus?

A I seen the troopers come off the bus.

Q And where did they go?

A To the restaurant.

Q And what did you do then?

A I went around, down to the deck here, and it was like a loading deck or whatever. Went around the building.

Q I show you what's marked Defendant's Exhibit 6. Can you tell the Court what's in that photograph?

A It's the back of -- it's the back of the building, like restaurant, the back of the restaurant.

Q Where is the loading dock, if you know, in reference to that picture?

A The loading dock is right here (indicating).

Q And after you jumped down from there, where did you go?

A I went around to the back of the building back here, around here (indicating).

Q I show you Defendant's Exhibit 7. Will you tell the Court what that is?

A It's --

Q Allow the judge to see this, too.

A It's the back of the terminal.

Q Where's that in relation to Defense Exhibit 6?

A It's like right here (indicating). This is where -- right here. It's like this part of the building going around, right there.

THE COURT: Looking to your right from six? Is that what --

THE WITNESS: Yeah. Yes.

THE COURT: Okay.

BY MR. DEVECKA:

Q I show you what's marked Defendant's Exhibit 8. Would you tell the Court what that is?

A. This is the parking lot right here. It's looking towards the hotel. This is the parking lot right here (indicating).

Q Can you show the Court how that -- that view is related to the view in Defendant's Exhibit 7, please?

A Well, if you looking this way, you will see this here (indicating).

Q In other words, --

THE COURT: That is the opposite direction?

BY MR. DEVECKA:

Q In other words, it's like this (indicating).

A Yeah. If you looking towards that way, you would see that.

THE COURT: Okay.

BY MR. DEVECKA:

Q I show you what's marked -- or let me ask you a question about Defendant's Exhibit 7. Did you go -- did you go where -- over the land that's shown in that exhibit?

A yes.

Q Defendant's Exhibit 7?

A Yes.

Q What's back there?

A Well' it was a - trucks were back there, a lot of land back there.

Q Is there something sticking up above the trucks there?

A It's like some kind of farm stuff. Hangar for grass feed or something.

Q Do you know what a silo is?

A No.

Q When you went across that area shown in Defense Exhibit 7, I believe it is, back toward the trucks and where that farm thing is, where did you come out?

A Come out just -- it's like -- come out right by -- was right back the truck stop. Like a little road like.

Q What kind of road?

A Kind of road cars drive on.

Q Were -- you remember seeing anything back there?

A It was the trucks was right there. The trucks was right there, fence. A lot of rocks and stuff like that.

Q Was there a fence around the field back there?

A Yes.

Q I show you Defendant's Exhibit 9. Can you tell the Court what that is?

A That's the road by the coming out from around the back right here where the truck

stop is. And the farm, whatever, hangar or -- that's where that is.

Q Hangar. Is it a tall building?

A I guess. I don't know. It's the thing I guess that holds bird seeds.

Q I show you what's marked Defend Exhibit 10. Well, first of all, on the night of September 1st, 1994, did you walk on that road?

A yes.

Q Show you what's marked Defendant's Exhibit 10. Before that, how did you get to that road?

A I went around -- went around here. Went around here, come all the way out around there, from on the side of the terminal thing, whatever, coming out that way (indicating).

Q That's -- that's the end of this terminal?

A Yeah.

Q Going over there towards that?

A Yes.

MR. ROCKTASHEL: For the record, Your Honor, I realize there's some leading here that we aren't objecting to, but what exhibit are we talking about, that counsel's referring the Defendant to and that's he's using to highlight this?

MR. DEVECKA: Seven.

MR. ROCKTASHEL: Seven. Thank you.

BY MR. DEVECKA:

Q Show you Defendant's Exhibit 10. Can you tell the Court what that is?

A That's the road coming out where the farm -- out were everything is, and the truck stop's right around there.

Q Did you travel over that area --

A Yes.

Q -- the night of September 1st?

A yes.

Q Show you what's marked in Defendant's Exhibit 12. I'm sorry. Defendant's Exhibit 11. Can you tell the Court what that is?

A That's the road that comes out where this is right here (indicating).

Q Where what is?

A The trucks and the bird feed. And it comes out right by the truck stop.

Q Can you tell the Court where you ended up the night of September 1st after you jumped down from the loading dock and you went down around that hotel?

A Ended up right here (indicating).

Q What exhibit number is that on the back?

A Eleven.

Q From that position, what could you see?

A The front of the bus terminal. The front of the bus. The whole bus.

Q When you got there, what did you see happening?

A Well, I seen people were boarding the bus, getting on the bus.

Q And then what else did you see?

A Officers standing out there, officers went up on the bus.

Q And then what did you see?

A I seen officer come off the bus with the bag.

Q Which bag was that?

A The black leather bag.

Q Was that the bag you left on the bus?

A Yes.

Q What did you do then?

A Wondered what was going on.

Q How long did you stay where you were?

A Not too long. Probably seconds. I went back around the building.

Q Seconds from when?

A Once they brung the bag off the bus.

Q And then where did you go?

A Went back around the building.

Q And where did you go then?

A Over to the other trucks, truck stop on down the street.

Q I show you what's marked Defendant's Exhibit 8. Do you recognize that?

A Yes.

Q And where did you go in relation to that?

A Well, this right here is the coming around the building. It's the terminal parking lot and it leads over to a couple more truck stops.

Q What did you -- where were you eventually -- or were you eventually stopped that night?

A I was stopped at a truck stop, the Buckhorn Plaza Truck Stop.

Q And where is that in relation to that photo?

A It's over that -- straight that way (indicating). Straight down. It's about probably next door to the hotel.

MR. DEVECKA: Your Honor, do we have the exhibits from the earlier hearing?

THE COURT: Yes.

MR. DEVECKA: Do we have the paper that was marked -- oh, here it is. I see it.

BY MR. DEVECKA:

Q Show you what's marked Defendant's Exhibit 1. And can you say on Defendant's Exhibit 1 where Buckhorn is where you were stopped?

A Right here (indicating).

Q And you see it indicates there something called hotel?

A Yes.

Q Does that appear in any of those photographs that we were just looking at?

A Yeah. Right here (indicating).

Q And what exhibit number is that?

A Eight.

Q And this red arrow on here, is that on the sidewalk in front of terminal to the right or the left as you look at the terminal?

A You might right here (indicating)?

Q Um-hum.

A Where I was? This is the sidewalk right here.

Q Is that where you were?

A Yes.

Q And in that drawing, can you say where the loading dock is, the corner of the building with the loading dock on it?

A Loading dock is right here (indicating).

MR. ROCKTASHEL: Could marks be put on that exhibit, Your Honor, in a different colored pen so we can memorialize what it is the Defendant's testifying to?

THE COURT: Yeah. That's the only thing new on there, I think. Do we have a green marker?

BY MR. DEVECKA:

Q Would you mark where the sidewalk is that you were watching the bus from at the beginning?

A Right here (indicating).

Q Can you mark an X there?

A Yes.

Q Mark an L where you said the loading dock was in that building.

A (Witness complied.)

Q Mark an H on the building you say is depicted in Defendant's Exhibit 8, the photograph.

A (Witness complied.)

Q And mark a me where you were -- in the plaza where you were picked up, arrested.

A (Witness complied.)

Q Thank you.

Now, when you were on this sidewalk where you have this X marked, did you still have your bus ticket with you?

A Yes.

Q When you went around the building and came up near that truck park there and that's an Exhibit 11, did you still nave your bus ticket with you then?

A yes.

Q Had you seen any cars leaving the truck stop when you were standing over there at the point where -- or in the position of Defense Exhibit 11, did you see any cars leaving the truck stop?

A Yes. There was cars leaving.

Q And how close were the cars coming to where you were?

A Actually they had to go right past me to get out.

Q And they would -- they would exit to which direction; your right or your left, do you remember?

A I know they would go up -- they would go up to -- they would come out this way and go out that way like there (indicating).

Q Well, let's ask you to indicated a dotted like in that pen I gave you on Commonwealth's -- Government's Exhibit -- excuse me, defense exhibit. Excuse me. Defense Exhibit 1, indicate by dotted line where the bus would go or where the cars would go -- excuse me -- where you saw the cars going go to leave?

A (Witness complied.)

Q Okay. Can you draw an arrow as to which way they would have been headed when they went along this dotted line?

A Draw an arrow?

Q No. How they who come out from here?

A Oh. (Witness complied.)

Q Why were you concerned with where the bus drove or where the cars drove when they left while you were at that corner?

A Well, I was wanting to get back on the bus.

Q Now, when you were stopped by the police at the Buckhorn Truck Stop, did you have your bus ticket with you?

A No, I didn't.

Q What did you do with it?

A Balled it up, threw it down.

Q When was that?

A Once I came back around from the side of the building right there.

Q And what, if anything, did you see the police do just before you did that?

A I don't understand what you're saying.

Q You were -- you testified you were at the corner watching the bus.

A Yes.

Q Is that right? Could you see the bus from there clearly?

A Yes.

Q What did you see happen?

A Seen police officer come off the bus with the bag and with -- looking in the bag, opened the bag up.

Q And what did you do then?

A Went around the building. Went around the building. Threw my ticket down.

MR. DEVECKA: That's all the questions I have.

THE COURT: Cross-examine.

MR. ROCKTASHEL: Your Honor, may I approach the witness to retrieve the exhibits?

THE COURT: Certainly.

CROSS-EXAMINATION

BY MR. ROCKTASHEL:

Q Sir, you bought your bus ticket in Newark; is that correct?

A Yes.

Q And you bought your bus ticket approximately four minutes after the bus was scheduled to depart at six p.m., isn't that correct?

A I don't know what time it was. I just purchased a ticket.

Q You were late getting on the bus, though; isn't that true?

A Yeah.

Q The bus already had all the passengers on by the time you got there with your paid ticket, isn't that correct?

A Yes.

Q And you were traveling from Newark to Cleveland, Ohio one way; is that true?

A Yeah.

Q And you paid $66.00 for the faire between Newark and Cleveland, is that true?

A I believe so.

Q Well, does that sound about right, $66.00?

A Yes.

Q Did you have a chance to look at the government exhibit that we previously marked in this case. There was a copy of the ticket, I believe. I am going to show you Government Exhibit 4.0. Is that an accurate photocopy of the ticket you purchased to travel between Newark and Cleveland on September 1st, 1994?

A It could and it couldn't be.

Q Does it look similar to the ticket you balled up and threw away when you saw that the police came off the bus with your bag?

A Yes.

Q Now, the bus driver had already closed the door by the time you got to the bus in Newark; isn't that true?

A I don't remember.

Q But the bus driver was already in the seat and the passengers were in their seat at

the time that bus was ready to depart; isn't that true?

A Yes.

Q And they were all in their seats at the time you got at the bus to get on the bus and travel toward Cleveland; isn't that true?

A Yes.

Q Now, your bus left at six p.m. and was scheduled to arrive in Cleveland, according to the ticket, at 2:55 a.m.; isn't that that true? Am I mistaken about that or is that when you were scheduled to arrive in Cleveland?

A There's what time the ticket said.

Q Well, do you know what time you were scheduled to get into Cleveland that night?

A The ticket said I would arrive at 2:55, I presume I would have arrived at 2:55.

Q Well, do you recall what time you were scheduled to arrive in Cleveland?

A I guess 2:55.

Q Now, when the bus pulled into Milesburg, the area where the truck plazas that we're talking about, you testified that you heard an announcement by the bus driver that you were stopping for 45 minutes at that location; isn't that true?

A Yes.

Q And you heard that announcement by the bus driver?

A Yeah.

Q And you knew that bus was only going to stop there for 45 minutes, correct?

A Yes.

Q And you knew that was the only rest stop until you got to Cleveland, isn't that true?

A Nope.

Q Well, did you know when the next rest stop was going to be?

A No.

Q You had been on the bus for approximately three hours, isn't that true, by the time the bus stopped in Milesburg?

A I don't know. I was sleeping.

Q Well, the bus left around 6:00, isn't that true, or shortly after when you arrived?

A Yeah.

Q And you stopped, according to your testimony on direct examination, in Milesburg at approximately 9:30 p.m., isn't that true?

A Yeah. Around there.

Q So you were asleep on the bus for approximately three and a half hours, isn't that right?

A Well, I just didn't fall asleep that quick.

Q Well, let's put it this way. You didn't get off the bus at any time between Newark and Milesburg, isn't that correct?

A Yes.

Q You never got off the use of the bathroom isn't that true?

A Between --

Q Between Newark and Milesburg, Pennsylvania, where you were arrested, you never got off the bus, for instance, to buy a refreshment or a snack at any of the stops between Newark and Milesburg, did you?

A No.

Q You stayed on the bus the entire time, right?

A Yes.

Q For approximately three and a half hours, isn't that correct?

A Yeah.

Q Now, when you got off the bus in Milesburg, according to your testimony, you got off the bus and you recognized the men standing there a distance from the bus as police officers; isn't that correct?

A No, that's incorrect.

Q Well, when did you first realize that police were at the location?

A After I got off the bus, I was probably about 10, 15 feet. I was sleeping.

Q So you got off the bus and within walking ten feet away from the bus after exiting, you noticed thee were police around the vicinity of the bus; isn't that true?

A Yes.

Q And they were wearing plain clothes, but they had patches on their hats and their windbreakers; isn't that correct?

A I can't recall.

Q Well, did you see a canine, a dog nearby?

A Yes.

Q And did you see this gentleman, Trooper Jack Felicita, with that dog on a leash?

A Yes. Well, scratch that. I'm not sure. I'm not sure if he was the guy that had the dog.

Q Is it fair to say that you saw a person who you believed to be a police officer with a police dog standing in the vicinity of the bus when you got off the bus in Milesburg?

A I can't recall.

Q Well, you recognize these gentlemen as being with the police, some police department, state police, et cetera; isn't that true?

A Yeah, once I got off the bus. Yeah.

Q And you never even got into the terminal and you knew that they were police officers, isn't that correct?

A Yes.

Q And you had already left your bag on the bus by the time you recognized the police officers as police officers, isn't that true?

A Yes.

Q And instead of going inside the terminal, you stayed outside the terminal and walked back in forth in front it, didn't you?

A Yes.

Q And you were keeping an eye on what the police were doing, isn't that correct?

A Doing the same thing that everybody else was doing.

Q Well, you were concerned about the police at that point, weren't you?

A No, I wasn't concerned about the police.

Q You planned on getting back to the bus, is that your testimony?

A Yes.

Q But you never got on the bus, isn't that true? You never got back on the bus after the rest stop was over, correct?

A True.

Q Instead, you saw the police from around the corner of the building come off the

bus with your bag, and you threw your bus ticket away; isn't that right?

A No, I didn't throw the bus ticket away then.

Q What did you do with it? You balled it up?

A I had went around the building. When I seen the police come with the bag, I went back around and I balled the bus ticket up.

Q Did you have the bus ticket on your person?

A Yes.

Q Were you wearing a wallet that day?

A No, I wasn't.

Q You were wearing a jump seat, like an athletic sweatsuit, isn't that correct.

A Yeah.

Q And it was a dark colored sweatsuit?

A Yeah.

Q And you had your bus ticket in one of the pockets of the sweatsuit, is that correct?

A Yeah.

Q And the jump suit, when it's the right side out, has a light colored gray panel on the front of it, the breast and the stomach area; isn't that correct?

A Yes.

Q And the rest of it's black, isn't that right?

A Yes.

Q And it's made out of something like nylon, isn't that true?

A Yeah.

Q And you had the bus ticket in one of your pants pockets in the sweat pants, is that correct?

A It could have been a pants pocket. It could have been the jacket pocket. I really don't remember what pocket it really was in. It was in a pocket.

Q That is your ticket to go from Newark to Cleveland, isn't that correct?

A Yeah.

Q And you were basically ripping it up and destroying it so it couldn't be used, isn't that true?

A Basically. Yeah.

Q Because you knew you weren't going to get back on the bus after you saw the troopers come off with the bag, isn't that correct?

A Yeah.

Q You didn't plan on going over to that bus and getting back in your seat and continuing on the Cleveland, did you?

A Yeah, I planned on it.

Q But you didn't do it in this case because you said the police there with the bag and you knew what was inside the bag, specifically three keys of cocaine; correct?

A False.

Q Well, sir, when you saw the police come off the bus with the bag, instead of

going on the bus, you went around the back of the building; isn't that the true?

A Yes.

Q And when you got back behind the building, knowing that the police had taken the bag off the bus, your bag, that black leather bag, you destroyed your ticket; correct?

A Yeah.

Q And then the bus left and you weren't on it, true?

A Yes.

Q Now, after you went around the corner and you destroyed your ticket, is that when you went into the area that's been described in some agricultural terms as place where seed was stored and the like?

A Once I -- what you say?

Q After you ripped up your ticket or balled up your ticket after you saw the police get off the bus with your bag --

A Yeah.

Q -- that's when you went on this back road area that was depicted in some of these photographs, isn't it?

A No. I went right back around the building.

Q Was the bus still there?

A Well, the -- yeah, the people -- the bus was still there and the passengers were all on the bus.

A Yes.

Q Were the police still in the vicinity of the bus?

A Yes.

Q And you walked right around in full view of these police officers after your destroyed your ticket, is that your testimony?

A Nope.

Q Well, where did you stay? Did you stay out of the view of the police officers during that period of time?

A If I would have walked back around, the police officers, I walk dead in front of them. I went around the building.

Q You went around the building out of the police officer's view, is that fair to say?

A Yes.

Q And you went into the vicinity that looked to you as if it was a farm area, isn't that correct?

A No. I went around, back around the building. It was a farm area around there. Don't get me wrong, but I went back around the building.

Q And that's an area that's enclosed by a fence, is that correct?

A It's got a parking lot next to the trucks with the fence all up around there.

Q And that's some distance away from where you were ultimately apprehended at the Buckhorn Plaza, correct?

A Yeah.

Q You had to walk a pretty good distance to get over to the Buckhorn Plaza from this area behind the Best Way Plaza right?

A Not -- not really.

Q Let's put it this way, sir. You had to walk through a field of some sort, is that true?

A Go straight across to the hotel. Right through there (indicating).

Q Did you walk through any grassy area to get --

A Yeah.

Q You did? And the grass was wet? Isn't that true?

A Yes.

Q It's not a paved area, is it?

A It was a paved area once you go through --

Q Once you go through the wet grassy area?

A Once you come back around the building, and you can walk across the paved area.

Q But to get to the paved area, you have to go through a grassy area that has some moisture?

A That's grass back there.

Q Well, did you walk through that grassy area?

A I was in the grass.

Q And the grass was wet, wasn't it?

A Yeah.

Q Now, let me show you Defense Exhibit 1 while we're on that topic. Your testimony is that you were pacing -- strike that. That you were walking in this red arrow area near the bus, is that correct?

A Yes.

Q And you went to that location after -- within ten feet of getting off the bus you

noticed that the police officers and the police dog were there, correct?

A No. I got off the bus. And I was like around here. Then I went over here (indicating).

Q You are indicating the curved area, the covered area of the entrance to the Best Way; is that correct?

A I was standing around here just like the rest of the people was. I mean there was other people out there, too.

Q And then I take it at some point you went around the corner that you've indicated here with the L and the star, is that right.

A Right here. That's -- I was standing right around here (indicating).

Q But at some point you went around the corner of the building where the L is indicated, isn't that right?

A Yes.

Q And that was before the bag came off the bus, isn't that correct?

A Yes.

Q And then at some point when the bag came off the bus, and you saw the bag come off the bus from around the corner of the Best Way, that's when you went around this area back here behind the Best Way; is that correct?

A No, it's not.

Q Where did you go after that?

A I went around here. I seen the bag come off the bus when I was standing right here (indicating).

Q So you were on other corner, is that correct?

A yes.

Q Let's see if we can depict that somehow. Can you put a mark, star of some point where you were when you saw the bag come off the bus?

A (Witness complied.)

Q Now you are facing the Best Way. This is the left side, the left corner of the Best Way; is that correct?

A Yes.

Q Now, to get from the right side where you have an L to this area, you had to go around the back of the Best Way; isn't that right?

A Yes.

Q And that was out of the view of where the bus was, isn't that correct?

A Yes.

Q How long did it take you to get from point L around the back of the Best Way to this left side where you put a star?

A I couldn't tell you.

Q Well, did it take more than five minutes?

A I couldn't tell you.

Q Could you do me a favor and could you take that blue pen and mark the route you traveled from point L over here to where the star is on the left side of the Best Way? Just so we can get a rough idea of the way you went.

A (Witness complied.)

Q Now, from this point at the corner where you ended up at the point in time when the bag came off the bus, you had a unobstructed view of the bus at that point; isn't that correct? You could see the bus, isn't that right?

A Yes.

Q And there was nothing in your way, is that right?

A Nope.

Q I take it it's pretty well lit out in front of the Best Way? It's illuminated by night lights, parking lights?

A Yeah, lights out there.

Q You could see that was your black leather bag that you had taken on the bus in Newark coming off the bus in the possession of the police officers, isn't that correct?

A Yes.

Q And you knew it was your bag they were taking off, correct?

A Yes.

Q Where did go from this point where this star is?

A Back around here (indicating).

Q So you went all the way back around the route you took behind the Best Way, is that correct?

A Um-hum.

Q And then where did you go?

A Out here and over towards to the hotel (indicating).

Q Can you put an arrow in that rightward direction that would indicate where you went?

A (Witness complied.)

Q Did you go through this area marked woods here?

A I -- I know I went through some grass, but you wouldn't come straight through the hotel there, too.

Q You did or did not go directly through the hotel area?

A I didn't go directly through. I mean it's a clear shot straight through there.

Q To the hotel or to the Buckhorn? I wasn't sure where you were indicating.

A To the hotel. But then you come back around here, then this -- you know, the woods -- I mean you know the woods, but then it's the Buckhorn hotel.

Q Sir, I take it you're not that familiar with this particular location. This was the first time you were there, is that true?

A Yes.

Q And did you take note of when you were at this advantage point at the corner of the building watching the police activity, of the fact that State Route 150 goes right in front of the Best Way?

A Did I take --

Q Did you notice that State Route 150 goes directly in front of the Best Way?

A I presume.

Q Well, could you see that from your advantage point here at the corner of the building where you saw the bag come off bus?

A Could I see the road?

Q Yes.

A Yes.

Q And it's a hard topped road, isn't that correct?

A I'm not sure.

Q And there's at least two lanes in opposite directions of travel, is that correct?

A Yes.

Q And did you note whether or not it had a berm or a place to walk?

A On the road?

Q Yes.

A I'm not sure.

Q Now, from this corner at the Best Way here where you put the star, you had to walk through a parking lot to get through State Route 150; isn't that true? There's a parking lot between State Route 150 and the Best Way, isn't that right?

A Yes.

Q And that's where the bus was parked, that vicinity; isn't that right?

A No. It was parked in front of -- bus over here (indicating).

Q But there are pumps indicated here where the trucks and the cars can fill up with gasoline, isn't that right?

A Yeah.

Q Just kind of like a big gas station, right?

A Yeah.

Q And you could have, if you wanted to, taken a more direct route across that parking lot to Route 150 to walk down to the Buckhorn Plaza or the hotel, isn't that true?

MR. DEVECKA: I'm going to object. He's asking the witness to speculate what he could have done. He could have done anything.

THE COURT: Overruled.

BY MR. ROCKTASHEL:

Q Let me put it this way. A more direct route than going back behind the Best Way, through the grassy area, around the woods, behind the motel to the Buckhorn Plaza would have been to walk right across, past the gas

pumps to State Route 150, walk down State Route 150 to the hotel or the Buckhorn Plaza; isn't that true?

A I guess you could have did that.

Q It would have been a lot shorter, wouldn't it?

A Well, I don't know.

Q Well, you wouldn't have had to walk through any grass; isn't that true?

A I walked through there the first time.

Q You wouldn't had to have gotten wet, isn't that true?

A Yeah, but I was already wet.

Q It would have been a dryer way to go? Well, you were wet from going behind the back of the Buckhorn Plaza on the two occasions that you did. Was it wet back there?

A It was grass back. I mean I guess that time of the night, you get dew on the grass.

Q You didn't notice any signs for the men's room or the restaurant in the rear of the Buckhorn Plaza, did you?

A I didn't pay attention.

Q Well, you didn't go back there to relieve yourself, shall we say?

A No.

Q You didn't go back there to get a snack or a soda or some refreshment for the rest of your trip from Milesburg to Cleveland, Ohio, did you?

A Where? Behind the building?

Q Yes.

A No.

Q There were no hot dog stands, no soda machines, et cetera, back there; isn't that true?

A I don't think there was at that time of the night.

Q But in event, that's not why you went back behind the Best Way, is it? You didn't go back there to relieve yourself, correct?

A No.

Q You didn't go back there to buy a soda, true?

A True.

Q And you didn't go back there buy some kind of food or refreshment to eat on the rest of your journey, isn't that correct?

A Yeah.

Q You went back there because you wanted to get out of the view of the police officers that you saw when you got off the bus, isn't that true?

A Nope.

Q Sir, when you saw that police dog, you knew it was affiliated with some kind of law enforcement agency; isn't that correct?

A Yeah.

Q And you knew that the police use the dogs to detect drugs, to sniff out drugs; isn't that true?

A I don't know -- I guess they use them for drug, attack dogs.

Q Well, I just want to get it clear. You knew these gentlemen, the one with the dogs and a other ones dressed similarly in their windbreakers and the state police patches weren't some kind of security outfit, they were police; isn't that correct?

A Yeah.

Q You knew they were police officers, right?

A Yeah.

Q And you knew that from a point within ten feet of the bus when you got off the bus, correct?

A Yeah.

Q And you knew they were police when you went around the side of the building, around

the back of the building to the advantage point where you saw them take the bag off the bus; isn't that correct?

A Yeah.

Q When you saw them take the bag off the bus, you knew it was police officers, the ones that you had seen previously that were taking your bag off the bus; isn't that true?

A Yes.

Q Now, at no point in time did you go up there and say, gentlemen, excuse me, you are taking my bag off the bus; did you?

A No.

Q You never went up to the police officers and said, sir, I'd like my bag back; isn't that correct?

A Yes.

Q Instead, you went back around the plaza, over into the direction of the motel and the other truck plaza, isn't that true?

A Yes.

Q In fact, by that point you had already destroyed your ticket as you were en route over to the motel; isn't that true?

A Yeah.

Q Now, sir, you destroyed the ticket because you didn't want that ticket found on your person; isn't that correct?

A Yeah.

Q You didn't want the police to stop you, pat you down, frisk you and find a ticket that would connect you to the bus trip on which that bag had been traveling as well; isn't that correct?

A I wouldn't want them to --

Q You wouldn't want them to find on your person, if they would stop and search you, that ticket that would link you to the bus from which the bag was taken?

A Yeah.

Q Are you the same Ted Russell Perkins who was convicted of robbery in Akron, Ohio, and sentenced to confinement for four years to fifteen years?

A Yes.

Q And that conviction occurred, correct me if I'm wrong, in approximately February of 1988?

A Yeah.

Q By the way, you never tried to get a refund for your ticket before you balled it up and tried to get rid of it, did you?

THE COURT: Mr. Rocktashel, I think you're being unduly repetitious about what happened after the bag was opened. You didn't ask that particular question but --

MR. ROCKTASHEL: I'll move on, Your Honor.

BY MR. ROCKTASHEL:

Q When you got on the bus in Newark, you put the bag in the overhead passenger storage

compartment, isn't that correct, or did you put it on the seat?

A Overhead.

Q In the overhead?

A Yeah.

Q And that's not a locked compartment that you have to use a knob or anything to close up? It's out in the open for everybody to see, isn't that correct?

A The compartment?

Q Yes.

A No, it doesn't have shut doors. Just --

Q Right. You could see your bag laying on the shelf, isn't that correct? You could see it if you stood up and looked into the--

A Well, if you stood up. But if you sit down, you can't see it.

Q Of course not. Other people would, if they want to put their bags next to your bag; isn't that correct?

A Yes.

Q And when you got off the bus in Milesburg, before you realized the police were there, you had put your bag on the seat; isn't that correct?

A Yes.

Q And that seat was -- strike that. There are two seats on the side of the bus that you were sitting on, isn't that correct? There's your seat -- strike that. There is a window seat and an aisle seat, isn't that correct, where you were sitting?

A Yes.

Q And were you sitting on the window seat or the aisle seat during your trip?

A On the aisle seat.

Q And the bag was next to you on the window seat, is that correct?

A No, it's not correct.

Q Where was it?

A I was sitting. The bag was on top of the thing up there.

Q You when you got off the bus after the driver announced at 45 minute stop, you took the bag off the overhead compartment and put it on the seat, is that correct?

A Yes.

Q Now, did you put it on the window seat or the aisle seat?

A I don't know. I just sat it in the seat.

Q And put the bag there in plain view where other people could see it, isn't that correct?

A It's mine. I don't -- by plain view, all in the bus, when you look. I just sat the bag down.

Q In fact, anybody walking past your seat could see that black leather bag sitting there; isn't that correct?

A Yes, correct.

Q Now, that bag was made of leather; is that true?

A Yeah.

Q It was a pretty high quality bag?

A I don't know. I didn't price no bag.

Q Did you buy the bag?

A No, I didn't.

Q Do you know how much it was worth?

A Nope.

Q You never got off -- strike that. From the time you first noticed the police from the time the bus left, you never once when in the terminal; isn't that correct?

A Before when?

Q Before -- strike that. Between the time that you got off the bus and first noticed the police, until the time that the bus left, you never got inside the terminal at

all, the Best Way terminal; isn't that correct?

A Yeah.

Q You never went inside the building, true?

A Not I -- I don't remember. I just woke up.

Q You never went in to buy another ticket to Cleveland, did you?

A For what?

THE COURT: Mr. Rocktashel.

BY MR. ROCKTASHEL:

Q Sir, when you got off the bus before you knew the police were present, you planned on going into the terminal, did you not?

A Got off the bus -- sit on the bus ride. You want to stretch.

Q Sure. And one way to stretch would be to get on the bus and in the terminal, for instance, and use the bathroom; isn't that correct?

A Another way to stretch is to get off the bus and just walk around and stretch your legs.

Q Did you go inside the terminal?

A I know I stayed outside the terminal.

Q But when you got off the bus before you realized the police were present, you planned on going into the terminal to use the facilities there; did you not?

A If I had to use the bathroom, I would have. But I didn't have to use the bathroom so I stayed outside.

MR. ROCKTASHEL: Your Honor, may I have a moment to check my notes?

THE COURT: Go ahead.

BY MR. ROCKTASHEL:

Q Sir, at the point in time after you were walking in front of the Best Way Plaza, when you went into this -- went around to the area marked L, the officers had not yet taken your bag off the bus; isn't that correct?

A Yes.

Q And from that point you could see the officers taking the dog onto the bus, isn't that true?

A I seen them took a dog on the bus, but it was so many people standing out there that I couldn't even see what was going on.

Q Now, were you on sidewalk area that's marked here red, pacing, when the dog was put on the bus, or where you at the star location to the right of that area, or were you at the L location when this dog was taken on the bus?

A You asked me was I pacing?

Q Well, I didn't say you were necessarily pacing, but this identified with pacing and red arrow?

A I was standing right here (indicating).

Q So you were standing where this other asterisks is on the -- what we'll call the

right side of the Best Way facility, isn't that correct?

A Yes.

Q And from that standpoint, you could see them take the dog on the bus; isn't that true?

A Yes.

Q And you figured, did you not, that they were planning on using the bus -- the dog to detect the presence of drugs on the bus, isn't that corrects?

A I didn't know what they were -- I didn't -- curious what was going on.

Q But after the dog was taken on the bus, that's when you went to the vicinity of this area marked L; isn't that right?

A I waited for a minute. I couldn't see because the people was standing out there, so I went around there.

Q And you went around to this location at the back of the Best Way where you saw at

some point in time, the bag being taken off the bus; isn't that correct?

A Want to say that again?

Q After you saw the dog being put on the bus, you walked around the back of the Best Way and stood at this corner on the left side of the truck terminal until you saw the bag being taken off the bus; isn't that correct?

A I saw the officer come off the bus, you know, and I went around here and then the officers -- people were getting on the bus.

Q Well, the officers got on the bus while you were still on the right side of the building; isn't that correct?

A Yes.

Q And they got on the bus with the dog, isn't that right?

A Yeah.

Q Now, up until the time when you saw the dog being put on the bus, you planned on

getting back on the bus and going to Cleveland and retrieving your bag, did you not?

A I didn't think I had to retrieve it.

Q Well --

A I mean -- I planned on getting on the bus at all times.

Q You planned on getting on the bus at all times?

A Yeah.

Q Had the bus left by the time you walked back around the Best Way to go over toward where the hotel was?

A No, the bus was still -- was still there. The police were out there, you know.

Q The police were still there and so was the bus, isn't that correct?

A Yes.

Q At any point while you were on left side of the Best Way, did you ever walk back over to the bus and try to get on?

A No.

MR. ROCKTASHEL: I have no other questions, Your Honor. Thank you.

THE COURT: Any redirect?

MR. DEVECKA: No, Your Honor.

THE COURT: You may step down, sir.

(Whereupon, the witness was excused.)

THE COURT: Any further testimony, Mr. Devecka?

MR. DEVECKA: Yes, I do. I move the Exhibits 3 through 11.

THE COURT: I think I already admitted those, Mr. Devecka. Any other testimony?

MR. DEVECKA: None.

THE COURT: Mr. Rocktashel, any rebuttal?

MR. ROCKTASHEL: No, Your Honor. Thank you.

THE COURT: Do you wish to summarize your position, Mr. Rocktashel?

MR. ROCKTASHEL: Yes, Your Honor.

THE COURT: You elaborated on your brief. I understand that. But some summarize it based on what we've heard.

MR. ROCKTASHEL: Yes, Your Honor. The record in this case, as adduced at this hearing, establishes that this Defendant has no expectation of privacy under the fourth amendment. He abandoned his bag on the bus. Went he got off bus in Milesburg, all of that occurred prior to the point in time when the officers determined that the bag was abandoned, based on objective points apparent to them, and looked inside the bag. And I'd just like to recite a few of those for the record.

I think they're outlined in full in our brief. But basically, the Defendant gets off the bus, and as he himself has admitted, immediately recognized the officers as police officers. In fact, Trooper Barber testified

he was within ten feet of the bus itself. The Defendant, who previously appeared groggy and as if he had just been sleeping, according to his own testimony, suddenly became more concerned and focused on activity of the police. In fact, he's testified to the same here today.